IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.293 OF 2006

IN

SUMMARY SUIT NO.3119 OF 2005

M/s.Southern Metals & Alloys Pvt.Ltd. ... Plaintiff

vs.

M/s.Hindustany Cylinder Co.Ltd. & another. ... Defendants.

Mr.Anil Agarwal, for Plaintiff.

Mr.Ajay P.Panickar, for Defendant no.2.

CORAM: D.K.DESHMUKH,J.

DATED: 26th September,2006

P.C.:-

1. Heard the learned Counsel appearing for both the sides. It prima facie appears that the goods have not been delivered by defendant no.2 to defendant no.1. Therefore, there is no question of passing decree against defendant no.1 without trial though defendant no.1 is not appearing.

2. So far as defendant no.2 is concerned, the defendant no.2 is a transporter and therefore, if the goods are not delivered by defendant no.2, the liability of the defendant no.2 would be to pay damages, and therefore, decree in summary suit cannot be passed against defendant no.2. Summons for judgment is disposed of. The defendants are granted unconditional leave to defend the suit. Written statement be filed within a period of Eight weeks from today.